

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ANTHONY DeCIANTIS

v.

A.T. WALL

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C.A. No. 18-00117-WES

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Before the Court is the State of Rhode Island's Motion to Dismiss the 28 U.S.C. § 2254 Petition filed by Anthony DeCiantis ("Petitioner") on March 9, 2018. (ECF Doc. No. 3). The State seeks dismissal of the Petition on the grounds that it is time-barred and that it fails to state a due process claim as a matter of law.¹ Petitioner Objects. (ECF Doc. No. 8). This matter has been referred to me for preliminary review, findings and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B) and LR Cv 72. The Court has determined that no hearing is necessary. After reviewing the memoranda submitted and performing independent research, I recommend that the Motion to Dismiss be GRANTED and that the Petition be dismissed.

Background

On January 10, 1983, Petitioner pled guilty to two counts of murder and one count of possession of a sawed-off shotgun. (ECF Doc. No. 3 at p. 3). The Rhode Island Superior Court

¹ The State relies upon Swarthout v. Cooke, 562 U.S. 216 (2011) and Greenholtz v. Inmates, 442 U.S. 1 (1979), in support of its argument that Petitioner fails to state a viable due process claim. In these cases, the Supreme Court held that the due process requirements of a parole proceeding are "minimal," and are met by providing an inmate with an opportunity to be heard and general notice of the reasons why parole was denied. 562 U.S. at 220. It has also held that the only federal right at issue is procedural and that a mere error of state law is not a denial of due process. Id. at 222. Here, Petitioner does not identify any constitutionally deficient process or procedures and, at most, alleges a state law error regarding the use of a risk-assessment instrument. Although it reasonably appears that Petitioner fails to state a viable federal due process claim, it is undisputable that this Petition is time-barred and thus I recommend dismissal solely on that basis.

sentenced Petitioner to two concurrent life sentences at the Adult Correctional Institutions (“ACI”) for the murder convictions and a concurrent five-year sentence for the firearm conviction. Id. Around the same time, a Rhode Island grand jury indicted Petitioner on a third murder charge. A trial jury found Petitioner guilty of that charge in June 1984, and he received a life sentence, which was to run consecutively to the two previously-imposed life sentences. Id. at p. 4. The Rhode Island Supreme Court affirmed Petitioner’s murder conviction in 1985. Id.²

Petitioner filed an application for post-conviction relief (“PCR”) on June 25, 2015, claiming that the Rhode Island Parole Board (“Parole Board”) violated his right to due process when it denied him parole on December 15, 2014. Id. Petitioner argued that the Parole Board’s explanation for why it denied him parole did not adhere to the minimum requirements of due process. Id. The Superior Court denied his PCR application on July 19, 2016, and the Rhode Island Supreme Court denied his Petition for Writ of Certiorari to review that decision on March 20, 2017. Id. at p. 5. This Petition followed on March 9, 2018. The present Petition contains a single ground for relief. Petitioner claims that “[t]he Rhode Island Parole Board violated Defendant’s due process rights by not properly reviewing his application, and not explaining properly it’s [sic] denial.” (ECF Doc. No. 1 at p. 5). As support for his claim, Petitioner states, “[t]he minutes of the parole board do not refer to the consideration of a risk assessment instrument by the Board; the denial of Defendant’s parole application did not adequately specify the reasons for the denial.” Id.

Analysis

The State has moved, pursuant to 28 U.S.C. § 2244, to dismiss the Petition alleging that the one-year statute of limitations applicable to a claim brought under 28 U.S.C. § 2254 expired

² This is Petitioner’s third § 2254 Petition filed in this Court arising out of his murder convictions. See also DeCiantis v. Vose, C.A. No. 1:94-cv-00405B (D.R.I.), and DeCiantis v. Wall, C.A. No. 1:12-cv-00018-JJM (D.R.I.).

prior to Petitioner filing this action. 28 U.S.C. § 2244(d)(1) provides “[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.” It further provides that the limitation period will begin to run on “the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence,” but that it shall be tolled while any “properly filed application for State post-conviction or other collateral review” is pending. 28 U.S.C. §§ 2244(d)(1)(D) and (d)(2).

In analyzing the statute of limitations claim, it is necessary to determine the date on which the statute of limitations began to run with respect to Petitioner’s habeas claim, the date on which the limitations period expired and whether there was any tolling of the limitations period in the interim. See 28 U.S.C. §§ 2244(d)(1)(D) and (d)(2). The Court examines the relevant time frames.

The Parole Board denied Petitioner parole on December 15, 2014. The State notes that at that time, Petitioner had the factual predicate for his claim, and the running of the statute of limitations commenced. (ECF Doc. No. 13 at p. 1). The Court concurs. See Brown v. Barrow, 512 F.3d 1304, 1307-1308 (11th Cir. 2008). Petitioner filed his PCR Application on June 25, 2015, 192 days after the Parole Board’s denial. Pursuant to 28 U.S.C. § 2244(d)(2), the limitations period was tolled beginning on June 25, 2015, and remained tolled while Petitioner’s application for PCR was pending in state court. On March 20, 2017, the Rhode Island Supreme Court denied Petitioner’s Writ of Certiorari to review the denial of his application for PCR and the statute of limitations clock began to tick anew. The statute of limitations continued to run through March 9, 2018 when he filed the present Petition. As noted, prior to the tolling period, 192 days elapsed, and after the tolling period ended, an additional 354 days elapsed (March 20,

2017 through March 9, 2018) before he filed this action. Accordingly, a total of 546 days (192+354=546) expired, thus barring this Petition.³

In an effort to circumvent the statute of limitations, Petitioner argues in his Objection that his Petition does not challenge the decision of the Parole Board, but rather it challenges the constitutionality of the Superior Court's denial of his application for PCR. (ECF Doc. No. 8 at p. 1). Despite his argument, Petitioner unequivocally alleges in his Petition that he was entitled to habeas relief because the Parole Board violated his right to due process. (ECF Doc. No. 1 at p. 6). Moreover, he later concedes in his Objection that the Parole Board's decision is truly what is at issue. See ECF Doc. No. 8 at p. 2 ("The petitioner avers that yes the underlining of his post conviction relief was of the states [sic] parole board denial of parole, mainly due to the lack of use of a risk assessment instrument which is statutorily required."). Accordingly, the Court rejects this unsupportable argument and recommends that the District Court find that the Petitioner is time-barred from seeking relief under 28 U.S.C. § 2254 relating to his 2014 denial of parole.⁴

Conclusion

For the foregoing reasons, I recommend that the State's Motion to Dismiss (ECF Doc. No. 3) be GRANTED, and that this § 2254 Petition be DISMISSED.

³ Petitioner's Objection argues that his case was "timely filed" and attaches a copy of a letter he received from his state court counsel, noting that he had one year from the date of the denial in the Rhode Island Supreme Court to file a federal habeas corpus claim. (ECF Doc. No. 8-1 at p. 2). The First Circuit Court of Appeals has noted that an attorney's error in calculating the limitations period, or advising a client concerning the limitations period, does not trigger equitable tolling. Cordle v. Guarino, 428 F.3d 46, 48 (1st Cir. 2005).

⁴ Petitioner has also filed a Motion to Amend his Petition (ECF Doc. No. 6) which has been referred to me for determination. While a Petition for Writ of Habeas Corpus may be amended or supplemented as provided in the Rules of Civil Procedure, 28 U.S.C. § 2242, such amendment may be refused where it would be futile. In the present case, the proposed amendment is futile because the "Relief Sought" all relates to the actions taken by the Parole Board, and thus the proposed amendment remains subject to dismissal as time-barred.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
August 3, 2018